Supreme Court, U.S.
FILED
JUL 18 1995
CLERK

(3)

No.94 - 1960

In the

Supreme Court of the United States

October Term, 1994

SANDRA FREEMAN and EUGENE FREEMAN
Petitioners
v.
DR. LENARD R. SIMON MD and BETH ISRAEL HOSPITAL
Respondent

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

PETITIONERS 'S REPLY BRIEF

SANDRA FREEMAN PRO SE
EUGENE FREEMAN PRO SE*

94 Corey Road Street #32
Brookline MA 02146
Tel.617-277-7229
(*Counsel of Record)

BEST AVAILABLE COPY

10pp

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES..... ii

1. **This Court Should Grant The Petition To Resolve The Question Whether The Conspiratorial Intent Of The Regulations 45 C.F.R. 46 and The State Laws May Be a Ground To a Fraudulent Misrepresentation, Precluding The Petitioners Constitutional Claim**..... 1

2. **The Court Should Grant The Petition To Resolve The Question Whether Regulation 45 C.F.R. 46 and The State Laws May Violate The Civil Rights And Liberty of This Petitioners and To Ignore The Language of The United States Constitution**..... 2

3. **The Court Should Grant The Petition To Resolve The Issue Concerning The Application Of The Retroactive Effect of *Harper* Within The Decision of *Leatherman***..... 4

CONCLUSION

TABLE OF AUTHORITIES

cases

1. ***Conley v. Gibson**, 355 U.S. 41,78 S.Ct. 99 L.Ed. 80 (1957)*..... 5

2. ***Gleason v. United States**, 458 F.2d. 171 (1972)*..... 2

3. ***Griswold v. Connecticut**, 381 U.S. 479,482(1965)*..... 3

4. ***Harper v. Virginia Dept. of Taxation***, *113 S.Ct. 2510 (1993)* 4

5. ***Leatherman v. Tarrant County Narcotics Intelligence Coordination Unit***, *113 S.Ct. 1160 (1993)* 5

6. ***Loving v. Virginia***, *388 U.S. 1,11 (1967)* 4

7. ***Meyer v. Nebraska***, *262 U.S. 390 (1923)* 3

8. ***Moor v. City of East Cleveland***, *431 U.S. 494,503 (1977)* 4

9. ***Palko v. Connecticut***, *302 U.S. 319,325 (1937)* 3

10. ***Paris Adult Theater v. Slanton***, *413 U.S. 49, 66 n. 13 (1973)* 4

11. ***Scarano v. Central R. Co. of New Jersey***, *203 F.2d 510 (1953)* 2

12. ***Shmerberg v. California***, *384 U.S. 757,771 (1966)* 2

13. ***Skinner v. Oklahoma***, *316 US 535,(1942)* 3

14. ***Whalen v. Roe***,*429 US 589,598,-600 (1977)* 3

15. ***Wyatt v. Cole***, *112 S.Ct. 1827, 1829,1833 (1992)* 5

STATUTES

1. M.G.L.A. Chapter 111 Section 203 (d)..... 4

2. M.G.L.A. Chapter 111 Section 204 (d)..... 4

3. M.G.L.A. Chapter 111 Section 205 (b)..... 4

4. M.G.L.A Chapter 176 B:20 (f) 4

5. 45 C.F.R. 46 (1991) 1,4

6. 42 U.S.C.A. Section 1983 5

7. Article III of the United States Constitution 1

8, M.G.L.A. Chapter 231:85.....2

PETITIONER'S REPLY BRIEF

This Honorable Court should grant the petition to resolve the question whether the conspiratorial intent of the Regulations 45 C.F.R. 46 and the State's laws may be a ground to a fraudulent misrepresentation, precluding the constitutional claim.

The petitioners Sandra and Eugene Freeman pro se strongly oppose and express their protest against the Respondents's position to evoke waiver and estoppel to the petitioners's claims under the Constitution in this action. In support of this opposition the petitioners state the grounds, as follows:

It is the petitioners, but not the Respondents sustained the injuries in fact under the Article III. It is the petitioners was precluded

from the discovery in action and substantive due process was grossly abused. And non of the issue presented was fully litigated under the Motion on Rule 12 (b)(6) and (1). It is the petitioners was precluded from the jury judgment and the award of punitive damages for all deprivations they sustained. It is the Respondents' internally conspired enterprise adventure and fraudulent misrepresentation, and concealed the fact and the nature of proposed research and experimentation. It is the petitioners was discriminated under the coercion and the authorization of the State of Massachusetts Laws. And the infliction of an injuries to the First Amendments rights caused irreparable damage, terminated petitioners offspring. It is the Respondents's joint venture, as a matter of law creates the deprivations that was done at the time the alleged injury was committed. It is the Respondents's answer in the State Court indicates specifically fraudulent misrepresentation which was done in manner to be considered as an negligence defense on the part of Respondents's. The immunity pleaded by as a non-profit charitable institution is to preclude liability upon the deprivations under the State law Chapter 176B:14 and the Chapter 231:85 which is infers from the Respondents's answer. This prior position is inconsistent with the Respondents's pleading in the District Court. The Respondents's pleaded the Motion under the Rule 12(b) (1) and (6) which is internally inconsistent. The Petitioners do not changed their position upon discovery of a facts concealed by the Respondents. The petitioners just nominate the discovery of deprivation by the appropriate terms. Respondents and material to the cause of action,: " The cause of action accrues when the plaintiff first knows or has reason to know that he has a cause of action, i.e. when the injury is discovered" (*Gleason v. United States,CA 3d.* 458 F.2d. 171(1972). The petitioners argue that the judicial estoppel arising in event to prevent a party from playing fat and loose with the courts. But not in the event of party, deprived of the constitutional and federal rights after discovery that such rights was recklessly disregarded upon the coercion of the State's

law. Respondents expressly concealed the existence and the nature of a experimental procedure done by unconsented to treatment Dr. Halvorson. Such premeditation which is infers from the concealment of an altered medical records and the evaluation, proposed by the nursing assessment must not be assumed as a negligence, mistake or other innocent reason. And subsequently must not be qualified as an malpractice. Therefore, the Respondents's illegal activity presented in the State's and the Federal Courts as "intentional contradiction is being used as a means of obtaining unfair advantage".(*Scarano v. Central R. Co. of New Jersey*, 203 F. 2d. 510 (1953). The Respondents's requested estoppel must not be afforded second time to conspiring Dr. Lenard R. Simon MD and BETH ISRAEL HOSPITAL.

2. The Court should grant the petition to resolve the question whether the Regulations 45 C.F.R. 46 and the State's law may violate the civil rights and liberty of this petitioners's and to ignore the language of the United States Constitution.

The Respondents ignorance concede that this Court has not resolved any of the issues presented by the petition. That issues is ripe for resolution in this case. The Respondents also rely upon the split in the Circuits on another issue. That issue should likewise be resolved here.

The Respondents do not defend the deprivations on the part of Dr. Simon, MD and the BETH ISRAEL HOSPITAL, done within their representative capacity and authorized by the state's laws. Those laws, however, within the petitioners' findings presents a significant risk to the petitioners's civil rights and liberty, attacking the Constitution of the United States . The Court of Appeals grossly misapplied the standard of review, disregarding petitioners inviolability of a human body and integrity of a personhood within the right of privacy, autonomy and the family values. This values blatantly disregarded by the

policies and the customs under Massachusetts State's laws . Such position ignore the constitutional requirements to enforce statutory guidelines to prevent governmental interference with the right of individual privacy. The Respondents ignore the issue of a mandatory authorization of a state's laws to inflict the petitioners injuries in the sphere of sexual intrafamilial relationship done by Dr. Lenard R. Simon MD and BETH ISRAEL HOSPITAL. The Respondents do not oppose or defend effect of dehumanization of research and experimantal treatment, that petitioner Sandra Freeman was coersively submitted to. The Petitioners argue, that the expansion of the Bill of Rights to restrict State deprivations afforded the Court an opportunity to base Court's decisions voiding State policies on the ground of the First Amendment (*Meyer, Skinner, Griswold*). The Respondents ignorant position explicitly disregards this Honorable Court emphasis upon the privacy rationale in defining and protecting the interest of person "to be let alone". The Petitioners pro se expressly oppose the Respondents's ignorance of Sandra Freeman rights of autonomy and the privacy under *Whalen v Roe*. This Court's decisions make it clear that the right of personal privacy and the guarantee of certain zones of privacy do exist under the Constitution as "fundamental" and "implicit to the concept of ordered liberty" (*Palko v. Connecticut,* 302 US 319, 325 (1937*)*. The Court also makes it clear that the right of personal privacy has extension to activities relating to marriage: procreation in (*Loving v. Virginia*, 388 US 1,11 (1967) and (*Paris Adult Theater v. Slaton*, 413 US 49, 66 n. 13 (1973). The Court said: " The constitutionally protected privacy of family, marriage, motherhood, procreation, and child rearing is not just concerned with a particular place, but with a protected intimate relationship. Such protected privacy extends to the doctor's office, the hospital... as otherwise required to safeguard the right of intimacy involved." (*Paris Adult Theater v. Slanton*, 413 U.S. 49,66,n. 13,(1973) As to the contrary, the language of 45 C.F.R. 46 and selected sections of Chapter 111 203(d),204 (d), 205 (b)

and Chapter 176B:20(f) authorize to disregard protected privacy and autonomy. The Court "...established that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nations history and traditions." *(Moor v. City of East Cleveland*, 431 US 494, 503, plurality (1977). The Respondents's reliance upon the both lower Court's standards of review just demonstrates the failure to consider this Court decision, where the Court admonished that "The integrity of the individual's person is a cherished value of our society." (*Shmerberg v. California*, 384 US 757, 771 (1966).

Opposing the Respondents's indifference to the petitioner's suffering, petitioners rely on this Honorable Court's authority. The Respondents's arguments concerning both lower Court's standards of review upheld the governmental invasion that is brutal to human dignity and it shocks the conscience, being a flagrant violation of First and Fourteenth amendments. The Respondents cannot repair State's laws error with new arguments on opposition.

3. The Court should grant the petition to resolve the issue concerning the application of the retroactive effect of *Harder* within the *Letherman* doctrine.

By relying on both lower Court's reasoning and authority the Respondents confirm the split among the Circuits, concerning this Court's announcement in *Harper v. Virginia Department of Taxation*,113 S.Ct.2510(1993). The Court said " when this Court applies a rule of federal law to the parties before it, that Rule is the controlling Rule of Federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule..[we] now prohibit the erection of selective temporal barriers to the application of federal law in

noncriminal cases." This opinion sound that the Federal Courts should not casually impose heightened pleading requirements or otherwise amend the Federal Rules of Civil Procedure in Section 1983 cases. In individual liability cases the reasoning in *Letherman* appears equally applicable to such cases. It reasoned that there was no basis for effectively amending Rule 8(a), commending sharply that such a result "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation"(*Leatherman v. Tarrant County*,) It also pointed out that the fact there were already exceptions to notice pleading provided in the Federal Rules strongly indicated that notice pleading applied to Section 1983 actions : " Explisio unius est exlusio alterius"(*Leatherman v. Tarrant County*). The Court responded that the primary rationale of qualified immunity - the safeguard of government and thus the public, and not the agents of government as such was not transferable to private defendant. The Court said : "[P]rivate parties hold no office requiring them to exercise discretion; nor are they principally concerned enhancing the public good"(*Wyatt v. Cole*,112 S.Ct. at 1833 (1992)

In "Reply due to the burden of proof to demonstrate Federal Court authority to hear Plaintiff's case", case 1:92-CV-12828-MA ,filed in District Court of the United States Clerk's office on December 22,1993, both petitioners cited *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*,113 S.Ct. 1160 ,(1993), where the Court said : " Rule 8(a)(2) requires that a complaint include only " a short and plain statement of the claim showing that the pleader entitled to relief." In *Conley v. Gibson*,355 U.S. 41, 78 S.Ct. 99 2L.Ed. 80(1957) we said in effect that the Rule meant what it said : "[T]he Federal Rules of Civil procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'short and plain statement of the claim that will

give defendant fair notice of what the plaintiffs claim is and the grounds upon which it rests."

The Respondents properly supply petitioner's pleaded notice complaint to the entire Court in order to demonstrate the efficasy of the Court statement, applicable to this case. The Court requirements cannot be ignored and the same principle should be applied to make the issue clear in this Petitioner's case.

CONCLUSION

For the forgoing reasons , the petition for a writ of certiorari should be granted.

Respectfully submitted to this Honorable Court by petitioners pro se Sandra and Eugene Freeman*, 94 Corey Road Unit 32, Brookline MA 02146, tel. 617-277-7229. (Counsel of Record*)